IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2555 OF 2005

Vijay Infrastructure Technologies Pvt. Ltd.. Petitioner

V/s.

State of Maharashtra & Ors. ... Respondents

Mr. Dr. Virendra Tulzapurkar, Sr. Counsel with Mr. F. Poonwani and Ms. S. Surve i/b. Little & Co. for the petitioner.
Mr. Niranjan Pandit, AGP for respondent Nos. 1 to 3.

CORAM : F.I. REBELLO &
ANOOP V. MOHTA,JJ.
DATED : 28th November, 2006

P.C.

. Rule. Heard forthwith.

2. According to the petitioners the agreement dated 27th June, 1996 for the purpose of stamp duty ought to have been assessed under Article 5 (ga) (i) to Schedule I of the Bombay Stamp Act, 1958 and not Article 25 (b) of the Schedule I of the Stamp Act.

3. By order dated 13th October, 1998 the Dy. Inspector General of Registration and Dy. Collector of Stamps (Enforcement), Mumbai held that the petitioners herein were liable to pay a sum of Rs.2,86,00,000/- (Rupees Two Crores Eighty Six Lacs)

as Stamp Duty along with penalty. The petitioners aggrieved, preferred an appeal before the Chief Controlling Authority, M.S. Pune, who disposed of the appeal by order dated 17th December, 2004. The appeal preferred was partly allowed. The learned Appellate Authorities have held that the Stamp Duty chargeable under Article 25 (b) of the Schedule I to the Stamp Act, 1958 is Rs.8.6 crores. The learned Appellate Authority also waived penalty for the period covered for the decision inclusive of the period taken by the lower Authority. It was further directed that lower Authority would regularise documents of the appellant on payment of stamp duty. The said order is the subject matter of the present challenge.

4. We have heard learned counsel for the petitioners. At the outset, it would be noted that Article 5 (ga) of Schedule I was introduced from 15.09.1996 and thus would be inapplicable to the present document. The document was executed prior to this date. The contention urged then was that the agreement would be chargeable under Article 5(h). The learned Appellate Authority after considering the various clauses of the agreement came to the conclusion that the document was chargeable under

Article 25(b) of Schedule I of the Bombay Stamp Act.

5. The learned counsel has taken us through the various clauses of the agreement to contend that it would not fall under Article 25(b) of Schedule I. Firstly, there is finding recorded by the Appellate Authority after construing the document that the agreement was an agreement of sale, what is purely a finding of fact, based on appreciation and/or considering the terms of the agreement. Even otherwise, in our opinion on a consideration of recitals 11 and 13 and the clauses 1 to 3, 5, 6, 7, 8, 9 and also clause 12 which authorises the petitioner to sell the constructed premises to purchasers with the petitioners entitled to appropriate proceeds as also clause 15 under which the petitioners were allowed to enter on the land eventhough styled as a licensee, it would be clear that whatever be the styling of the agreement for all purposes, it is an agreement to sell. Clause 12 further indicates that insofar as the agreement between the firm i.e. the petitioners herein and their purchasers would be by a separate agreement, where owners would join such agreement only as a formal or confirming party. Insofar as clause 15 is concerned, the possession is

given for the purpose of enabling the petitioners to enter upon the land and develop the same and put up buildings. Though it is provided that the possession would be handed over on the execution of the conveyance or any other documents or transfer in respect of said land the very fact that the petitioner can put up building and sell the flats to prospective buyers under agreements with the owners signing as formal parties, the possession for all purposes is as part of the agreement to sell. An agreement to sell by itself however would not be a conveyance or a transfer. Explanation [1] to clause 25 however reads as under:

> "For the purposes of this article, where in the case of agreement to sell an immovable property is transferred or agreed to be transferred to the purchaser before the execution, or at the time of execution, or after the execution of, such agreement then such agreement to sell shall be deemed to be a conveyance and stamp duty thereon shall be leviable accordingly:"

. In the instant case, pursuant to the agreement, petitioners were put in possession. It is immaterial whether the possession was pursuant to licence as for all purposes, the petitioners were on the land and entitled to carry on all activities and the owners in terms of clause 16 had to execute

general power of attorney in favour of the petitioners and to sign all such applications as may be required for implementing the agreement. By the explanation the document is treated as a conveyance and charged as such.

. Considering the above, we are clearly of the opinion that the order of the Appellate Authority does not suffer from any error apparent on the face of the record and consequently, find no cause to interfere with the order of the Appellate Authority in the exercise of our extra-ordinary jurisdiction.

6. It may be noted that the case of the petitioner further is that the agreement was cancelled by order dated 21st December, 2004. If that be the case and if the petitioners are entitled to any refund, it would be an independent exercise by the petitioners. It would not be relevant for the purpose of considering the legality of the order of the Appellate Authority.

7. For the aforesaid reasons, the petition stands dismissed. Rule discharged.

[F.I. REBELLO, J.]

[ANOOP V. MOHTA, J.]